

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

United States of America,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 1:08-cr-54
)	
Howard O. Kieffer,)	
)	
Defendant.)	ORDER

Before the Court is the Defendant's motion for release pending appeal. The Defendant was sentenced to 51 months imprisonment on August 14, 2009. He filed notice of appeal and the current motion on August 28, 2009. He is scheduled to report to the Bureau of Prisons to begin serving his sentence on September 14, 2009.

Release pending appeal is governed by 18 U.S.C. § 3143(b) which provides as follows:

Except as provided in paragraph (2), the judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds--

(A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and

(B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in--

- (i) reversal,
- (ii) an order for a new trial,
- (iii) a sentence that does not include a term of imprisonment, or
- (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

The Court has reviewed the motion and finds the Defendant has failed to establish a likelihood of success on appeal.

Accordingly, the motion is **DENIED**.

IT IS SO ORDERED.

Dated this 2nd day of September, 2009.

/s/ Patrick A. Conmy

Patrick A. Conmy, Senior District Judge
United States District Court